

EXHIBIT 5

In the Matter Of:

HAMAMA, ET AL. vs ADDUCCI, ET AL.
MICHAEL BERNACKE-CONFIDENTIAL

July 13, 2018

Prepared for you by



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<p style="text-align: right;">Page 1</p> <p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 FOR THE EASTERN DISTRICT OF MICHIGAN</p> <p>3 SOUTHERN DIVISION</p> <p>4 - - - - -x</p> <p>5 USAMA JAMIL HAMAMA, :</p> <p>6 et al., :</p> <p>7 Petitioners and : Case No. 1:17-cv-11910</p> <p>8 Plaintiffs, :</p> <p>9 v. :</p> <p>10 REBECCA ADDUCCI, :</p> <p>11 et al., :</p> <p>12 Respondents and :</p> <p>13 Defendants. :</p> <p>14 - - - - -x</p> <p>15 Confidential</p> <p>16</p> <p>17 Deposition of MICHAEL BERNACKE</p> <p>18 Washington, D.C.</p> <p>19 Friday, July 13, 2018</p> <p>20 9:04 a.m.</p> <p>21</p> <p>22 Pages: 1 - 157</p> <p>23 Reported By: Victoria Lynn Wilson, RMR, CRR</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 3</p> <p>1 A P P E A R A N C E S</p> <p>2 ON BEHALF OF ALL PETITIONERS AND PLAINTIFFS:</p> <p>3 KIMBERLY L. SCOTT, ESQUIRE</p> <p>4 MILLER, CANFIELD, PADDOCK & STONE, PLC</p> <p>5 101 North Main Street</p> <p>6 Seventh Floor</p> <p>7 Ann Arbor, MI 48104</p> <p>8 (734) 668-7696</p> <p>9</p> <p>10 MARGO SCHLANGER, ESQUIRE</p> <p>11 625 South State Street</p> <p>12 Ann Arbor, MI 48109</p> <p>13 (734) 615-2618</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 2</p> <p>1 Deposition of MICHAEL BERNACKE, held at the</p> <p>2 offices of:</p> <p>3</p> <p>4</p> <p>5 UNITED STATES DEPARTMENT OF JUSTICE</p> <p>6 450 5th Street, NW</p> <p>7 Washington, DC 20001</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12 Pursuant to notice, before Victoria Lynn</p> <p>13 Wilson, Registered Merit Reporter, Certified</p> <p>14 Realtime Reporter, Notary Public in and for the</p> <p>15 District of Columbia.</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 A P P E A R A N C E S C O N T I N U E D</p> <p>2 ON BEHALF OF RESPONDENTS AND DEFENDANTS:</p> <p>3 WILLIAM C. SILVIS, ESQUIRE</p> <p>4 ASSISTANT DIRECTOR</p> <p>5 NICOLE MURLEY, ESQUIRE</p> <p>6 TRIAL ATTORNEY</p> <p>7 UNITED STATES DEPARTMENT OF JUSTICE</p> <p>8 OFFICE OF IMMIGRATION LITIGATION</p> <p>9 DISTRICT COURT SECTION</p> <p>10 950 Pennsylvania Ave,NW</p> <p>11 Washington, DC 20530</p> <p>12 (202) 307-4693</p> <p>13</p> <p>14 ON BEHALF OF U.S. IMMIGRATION AND CUSTOMS</p> <p>15 ENFORCEMENT AND THE WITNESS:</p> <p>16 SABRINA V. VASA, ESQUIRE</p> <p>17 ASSOCIATE LEGAL ADVISOR</p> <p>18 DISTRICT COURT LITIGATION DIVISION</p> <p>19 U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT</p> <p>20 500 12th Street, SW MS 5900</p> <p>21 Washington, DC 20536</p> <p>22 (202) 732-3358</p> <p>23</p> <p>24</p> <p>25</p>

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<p style="text-align: right;">Page 6</p> <p style="text-align: center;">E X H I B I T S C O N T I N U E D</p> <p>J. SCHULTZ EXHIBITS PAGE</p> <p>Exhibit 11 12/6/16 Letter from Al Safi to DHS Re: Shao, Nahidh --</p> <p>Exhibit 12 1/24/17 Brussels Working Group Teleconference --</p> <p>Exhibit 13 6/7/17 Compliments document from Abdulrazzaq Ali to DHS --</p> <p>Exhibit 14 1/9/18 Email from Bernacke to Jawad, et al. 107</p> <p>Exhibit 15 1/25/18 Email from Bernacke to Clinton 113</p> <p>Exhibit 16 1/9/17 Handwritten Notes --</p> <p>Exhibit 17 12/5/17 Meeting with Al-Khairalla Ministry of Foreign Affairs document --</p> <p>Exhibit 19 6/25/17 Email Chain from Tenarodriguez to Weiller, et al. --</p> <p>Exhibit 20 6/28/18 Email Chain from Stafford to Clinton 123</p> <p>Exhibit 21 7/17/17 Email Chain from Schultz to Lieberman --</p> <p>Exhibit 22 7/20/17 Email Chain from Farmer to Schultz --</p>	<p style="text-align: right;">Page 8</p> <p style="text-align: center;">P R O C E E D I N G S</p> <p>MICHAEL BERNACKE,</p> <p>having been duly sworn, testified as follows:</p> <p>EXAMINATION BY COUNSEL ON BEHALF OF ALL PETITIONERS AND PLAINTIFFS</p> <p>BY MS. SCOTT:</p> <p>Q Good morning, Mr. Bernacke.</p> <p>A Good morning.</p> <p>Q I am going to hand you Exhibit 25, which is the declaration that you submitted on December 22nd, 2017.</p> <p>(Bernacke Exhibit 25 was marked for identification and is attached to the transcript.)</p> <p>Q Do you recognize that document?</p> <p>A I do.</p> <p>Q Okay. We're going to talk today about many different processes within ICE relating to obtaining travel documents and other documentation for Iraqi nationals, and I think it would be helpful if off that we come to an understanding of the various terms that we're going to be using today.</p> <p>A Uh-huh.</p> <p>Q All right? If I use the term "GOI," do you understand what that means?</p>

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1 procure travel documents.
2 Q So, let me ask you the situation where an
3 individual is out on an order of supervision. Do
4 you understand what that term "order of" --
5 A Yes, I do.
6 Q And what does it mean?
7 A It's essentially a parole or probation
8 mechanism within the immigration context in which
9 we have aliens on supervised release reporting to
10 us on a regularized basis.
11 Q And because they're reporting, do you
12 understand you have knowledge of where they're
13 residing; correct?
14 A Generally speaking, yes.
15 Q Okay. And in the situations in which
16 there are individuals out on orders of
17 supervision, has ICE obtained or started to obtain
18 travel documents before they've arrested the
19 individual?
20 A Can you restate that question.
21 Q Sure. Do you know of instances in which
22 somebody was out on order of supervision, ICE
23 submitted travel -- travel document presentations
24 or applications and then arrested the individual?
25 A Yes.

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1 Q Is that typical?
2 A Yeah, it is. Aliens on order of
3 supervisions have final orders of removal or else
4 they wouldn't have an order of supervision.
5 They -- at times, they are released as a result of
6 our inability to obtain a travel document and we
7 may receive one at a later date, and then we will
8 rearrest that alien as they were generally
9 arrested once before.
10 Q And when you say that you may receive a
11 travel document at a later date, that's because
12 ICE has made efforts to obtain that travel
13 document; correct?
14 A Correct.
15 Q So, the concerns that you previously
16 testified about not knowing who the individual may
17 be or not knowing where they're located, all those
18 other concerns don't necessarily apply to those
19 that are out on orders of supervision.
20 A It's a little bit different. What I was
21 referring to previously was initial contact with
22 those individuals.
23 Q All right. So, do you know what the term
24 "fugitive operation" means?
25 A I do.

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1 Q And what does it mean?
2 A It is a program that's managed within
3 enforcement removal operations that acquires
4 immigration fugitives, aliens that have absconded
5 after the issuance of a final order of removal.
6 Q Is it always because somebody has
7 absconded?
8 A No. The program has been reframed in
9 recent years to focus on criminal aliens that are
10 at large or other enforcement priorities.
11 Q Do you know the -- what the phrase
12 "operation cross-check" means?
13 A I do.
14 Q And what does it mean?
15 A It is an organized targeted operation that
16 generally focuses on criminal aliens.
17 Q When there is a fugitive operation, is it
18 typical that ICE will try to obtain or start the
19 process to obtain travel documents before the
20 individual is arrested?
21 A As I mentioned before, many times with our
22 at-large operations, and that encompasses fugitive
23 operations, many times with our at-large
24 operations, we're operating off of actionable
25 intelligence that is time-sensitive, leads that

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1 are time-sensitive, and we may not always have
2 time to obtain a travel document prior to
3 acquisition of that alien.
4 Q Would future operations on occasion
5 include those individuals that are out on orders
6 of supervision?
7 A It could. It could.
8 Q And in those situations when there's a
9 future operation for individuals with orders of
10 supervision, is it possible that ICE would have
11 tried to obtain travel documents before the
12 arrest?
13 A Usually when they -- during the alien's
14 initial detainment.
15 Q You said, "usually"?
16 A Yeah, generally speaking.
17 Q What do you mean by "initial detainment"?
18 A This kind of goes back to Zadvydas and
19 SLRRFF. An alien is usually, generally, arrested
20 by ERO, HSI, Customs and Border Protection. They
21 are detained with us. We may -- we will request a
22 travel document in instances where we do need a
23 travel document and -- and in the event that we
24 are unable to obtain a travel document, that alien
25 may be released on an order of supervision.

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<p style="text-align: right;">Page 57</p> <p>1 A Okay. We will identify, through our 2 detention inventories, to see how many Iraqi 3 nationals are available for a charter flight with 4 administratively final orders of removal and -- 5 and contact our ICE air operations division to see 6 their availability for flights. We use a contract 7 service provider, so we have to make sure that 8 their scheduling is deconflicted with us, and we 9 will notify them that we have a tranche of aliens 10 that are amenable to removal and can be flown out. 11 Q So, then what happens next after you 12 notify them? 13 A Usually, a date is agreed upon by my unit 14 and ICE air operations and we will coordinate 15 logistics, a staging location, how many aliens 16 will be on the plane. What else? And -- and, 17 also, you know, any travel documents that need to 18 be routed to -- to the staging location prior to 19 the flight occurring. And that's essentially -- 20 those are the iterative planning stages. 21 Q At what stage do you inform Iraqi 22 Government that there's going to be a charter 23 flight? 24 A We will usually seek authorization to do 25 one prior to the nascent stages of planning to see</p>	<p style="text-align: right;">Page 59</p> <p>1 authorization on behalf of the U.S. Government for 2 the June 2017 flight? 3 A I don't. 4 Q Do you know who from the Iraqi Government 5 gave the verbal agreement? 6 A I don't. 7 Q Do you know if the Iraqi Government gave a 8 verbal agreement to that date? 9 A I do not. I don't know the mechanism in 10 which that was communicated to us. 11 Q All right. We're slowly getting there. 12 Let's go to the next page. So, on paragraph nine, 13 can you read that for me. I mean as you're 14 reading, I'm going to stop and we're going to talk 15 about certain statements in here. Okay? 16 A Sure thing. "Removal by commercial 17 flights requires a significantly more onerous 18 process because travel documents must be 19 individually obtained through direct engagement 20 with the Iraqi Government in Baghdad." 21 Q Okay. Let's stop there. What do you mean 22 by "commercial flights are a more onerous 23 process"? 24 A Usually, and at the time of the drafting 25 of this declaration and -- we will have to obtain</p>
<p style="text-align: right;">Page 58</p> <p>1 whether or not they would be amenable to accepting 2 a flight and what their availability is in terms 3 of potential accepting a flight. 4 Q Do you -- does the Iraqi Government give a 5 written confirmation that that date is acceptable 6 to them? 7 A Not that I have seen. I think we've only 8 gotten verbal authorizations. It may be different 9 for our personnel abroad dealing with the Iraqi 10 Government, but I have not seen any written 11 authorization that I can recall. 12 Q Okay. And who on the U.S. side receives 13 the verbal authorization from the Iraqi 14 Government? 15 A Usually it will be either myself or, most 16 likely, my staff, James Maddox. 17 Q And who would Mr. Maddox or yourself 18 receive that verbal agreement or authorization 19 from on the Iraqi side? 20 A Usually from Mr. Al-Anpaqi. 21 Q Was that the same process prior to you 22 becoming unit chief? 23 A I couldn't speak to any particulars with 24 the process as to the details. 25 Q So, do you know who received the</p>	<p style="text-align: right;">Page 60</p> <p>1 travel documents individually from the Government 2 of Iraq. Those aliens are scheduled for an 3 interview, and they're interviewed by the 4 government, and then the -- the authorization, as 5 I understand it, from the Iraqi side, is given in 6 Baghdad. The embassy will issue -- the consulate 7 will issue the travel document and then we will 8 pay for it, receive it and then schedule a flight 9 resulting from that. 10 Q Okay. Is this process more onerous than a 11 process that's used for other countries? 12 A For commercial flights -- 13 Q Yes. 14 A -- you mean? 15 It's -- it's equivalent, but the process, 16 in general, is more onerous than a charter flight. 17 Q Okay. Can you read the next sentence, 18 please. 19 A Sure thing. "This is a labor intensive, 20 expensive and time-consuming process that requires 21 engagement of individuals in different agencies 22 located in multiple countries." 23 Q And it says, "in several different 24 agencies located in multiple countries"; right? 25 A Uh-huh.</p>

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<p style="text-align: right;">Page 61</p> <p>1 Q Okay. What multiple countries are you --</p> <p>2 well, what do you mean by "several different</p> <p>3 agencies located in multiple countries"?</p> <p>4 A What I'm referring to is in any -- any</p> <p>5 government agency that is utilized and contacted</p> <p>6 by the Government of Iraq, also ICE and Department</p> <p>7 of State.</p> <p>8 MS. SCOTT: Can you read that back to me.</p> <p>9 (The reporter read the record as</p> <p>10 requested.)</p> <p>11 Q Okay. Do you know which agencies in Iraq</p> <p>12 would be involved?</p> <p>13 A Generally, their Ministry of Foreign</p> <p>14 Affairs, their Ministry of Immigration and also</p> <p>15 the embassy. I don't know the specific names for</p> <p>16 their Ministry of Foreign Affairs or Ministry of</p> <p>17 Immigration, I'm just referring to the entities</p> <p>18 that have administrative controls over those</p> <p>19 processes.</p> <p>20 Q All right. So, you called the obtaining</p> <p>21 of travel documents a labor-intensive process and</p> <p>22 time-consuming process.</p> <p>23 A It is. It is.</p> <p>24 Q So, we are now going to walk through that</p> <p>25 process. And so, can you -- and we're going to</p>	<p style="text-align: right;">Page 63</p> <p>1 Q Has it always been the process to submit</p> <p>2 the travel documents to the Iraqi Embassy in D.C.?</p> <p>3 A Since I encumbered this role, yes.</p> <p>4 Q And that's currently the same process now?</p> <p>5 A Yes.</p> <p>6 Q Okay. Go ahead.</p> <p>7 A So, those travel documents requests are</p> <p>8 submitted. We will coordinate interviews with the</p> <p>9 embassy, with the counselor staff and -- and agree</p> <p>10 upon a date and location which these interviews</p> <p>11 will occur.</p> <p>12 The aliens are then -- we will contact the</p> <p>13 field offices once we identify a location to house</p> <p>14 the aliens for those interviews. We will contact</p> <p>15 the field offices to transfer the aliens to that</p> <p>16 detention location, and I will send out Mr. Maddox</p> <p>17 to accompany Mr. Al-Anpaqi to conduct those</p> <p>18 interviews.</p> <p>19 Q Okay. And then what's the next stage of</p> <p>20 that process?</p> <p>21 A Mr. Maddox will escort -- he is the ERO</p> <p>22 representative, of course, that Mr. Al-Anpaqi is</p> <p>23 familiar with, so, we -- I will send a familiar</p> <p>24 face to escort Mr. Al-Anpaqi to the detention</p> <p>25 location that we will conduct the interviews at</p>
<p style="text-align: right;">Page 62</p> <p>1 want the nitty-gritty. Start from day one when</p> <p>2 you identify that Iraqi national with the travel</p> <p>3 document to when you get a decision from Iraq and</p> <p>4 whether or not the travel document will be issued.</p> <p>5 A Okay. As presently executed, what we do</p> <p>6 is identify the detention inventory of Iraqi</p> <p>7 nationals that are currently detained by ICE, and</p> <p>8 we will either reach out to the field offices or</p> <p>9 they will reach out to us with a travel document</p> <p>10 requests. Again, travel documents processes are</p> <p>11 centralized at headquarters.</p> <p>12 The travel document requests are manually</p> <p>13 reviewed by Mr. Maddox to ensure data quality,</p> <p>14 that they are complete, and submitted over to the</p> <p>15 Government of Iraq. We will -- to the embassy.</p> <p>16 Q Can I stop you right there.</p> <p>17 A Sure thing.</p> <p>18 Q And just for clarifications. Is there --</p> <p>19 when you say it's submitted to the Government of</p> <p>20 Iraq and then you said to the embassy --</p> <p>21 A Uh-huh.</p> <p>22 Q -- which embassy are you talking about?</p> <p>23 A The embassy here in Washington, D.C.</p> <p>24 Q Okay. Iraqi Embassy?</p> <p>25 A The Iraqi Embassy in Washington, D.C.</p>	<p style="text-align: right;">Page 64</p> <p>1 and -- and Mr. Al-Anpaqi will interview the</p> <p>2 detainees to ascertain -- I have to assume</p> <p>3 ascertaining identity and citizenship from those</p> <p>4 aliens.</p> <p>5 Q Okay. And what happens after the</p> <p>6 interview?</p> <p>7 A He will -- as I understand it, he takes</p> <p>8 the results of those interviews, submits them to</p> <p>9 Iraq, as he's described in the past, and --</p> <p>10 Q Okay. So, let me stop you there.</p> <p>11 A Sure.</p> <p>12 Q What do you mean by "as he's described in</p> <p>13 the past"?</p> <p>14 A During meetings. During meetings that</p> <p>15 I've had with him in which he's gone over his end</p> <p>16 of the process, Mr. Al-Anpaqi's end of the</p> <p>17 process.</p> <p>18 Q So, what did he say -- who -- what was his</p> <p>19 description of the process?</p> <p>20 A He will identify the aliens, ascertain</p> <p>21 their citizenship, and he will report back on the</p> <p>22 results to --</p> <p>23 Q We're talking past each other. It's my</p> <p>24 bad question. Sorry.</p> <p>25 A Okay. Okay.</p>

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<p style="text-align: right;">Page 65</p> <p>1 Q So, who does he say he submits the 2 applications -- 3 A He just says he sends them back to 4 Baghdad. 5 Q So, he doesn't identify 6 specific individual -- 7 A Or entity, no. 8 Q Okay. Go ahead. 9 A So, he will submit those -- those results 10 of his interviews back to Baghdad, and they will, 11 as I understand it, give authorization to issue 12 the travel documents. 13 Q When are the travel documents submitted to 14 Iraq? 15 A What do you mean? 16 Q So, here's the -- so, let me -- so, I 17 think we talked about the interview process. I 18 want to go before the interview process. So, 19 you've identified the Iraqi national. 20 A Uh-huh. Uh-huh. 21 Q How do you notify -- so, when -- okay. 22 When do you pull together travel document 23 presentation? 24 A The travel document presentation, by ICE 25 guidance, is required to be submitted to us within</p>	<p style="text-align: right;">Page 67</p> <p>1 the May 2018 interview -- 2 A Okay. 3 Q -- and those individuals as our example. 4 Okay? And I also think that we might have a 5 language difference about what we call the process 6 for obtaining travel documents. I've been using 7 "travel document presentation." Do you know what 8 that means? 9 A Yes, I do. 10 Q And what is that? 11 A It's a packet of what I'm -- what I 12 believe I'm referring to as a travel document 13 request, it's a packet of documents that includes 14 identity documents, immigration documents and 15 potentially passport applications, anything that 16 an embassy would presumably need to issue a travel 17 document. 18 Q And what's an identity document? 19 A National ID card, birth certificate, 20 et cetera. 21 Q Okay. And then you've used the term 22 "travel document acquisition process." What is 23 that? 24 A The motions that we undertake to submit a 25 travel document request or a travel document</p>
<p style="text-align: right;">Page 66</p> <p>1 seven days of receipt of the alien in ICE 2 detention. 3 Q And who provides that presentation? 4 A Usually deportation officers in the field 5 will submit that to my unit. 6 Q And, then, when is a travel document 7 presentation submitted to Iraq? 8 A Immediately thereafter. It's supposed to 9 be submitted as soon as possible. 10 Q And what is the source of materials that 11 are used for the travel document presentation? 12 A Usually documents from the alien's 13 administrative file. 14 MS. SCOTT: All right. Let's take a 15 break. 16 THE WITNESS: Okay. 17 (A recess was taken.) 18 BY MS. SCOTT: 19 Q So, Mr. Bernacke, we've been talking about 20 the process for obtaining travel documents, the 21 interview process, and then the process to 22 actually effectuate removal to Iraq. And I think 23 it might be beneficial if we focus on a specific 24 instance that happened to try and walk through 25 what happened there, and I want to refer -- use</p>	<p style="text-align: right;">Page 68</p> <p>1 presentation to an embassy, any liaison efforts 2 that result from that, and interview efforts on 3 the part of the embassy or consulate to -- to 4 identify that national and then issue a travel 5 document. 6 Q Okay. So, my questions before, when I 7 used "travel document presentation," "travel 8 document request," actually meant travel document 9 acquisition process. 10 A Okay. Okay. 11 Q So, that's, I think, where some of our 12 disconnect was going. 13 A Okay. 14 Q So, let's start with the travel document 15 acquisition process for those individuals that 16 were interviewed in May 2018. 17 A Okay. So, those -- those aliens had a 18 number of travel document requests, the travel 19 document presentation packets, that were submitted 20 to the embassy, the Government of Iraq's Embassy 21 in Washington, D.C. throughout the month of -- 22 months of March and April, and I believe a number 23 of cases went to them during May of 2018, that had 24 accumulated for a period of time, you know, during 25 those months. It was a numbering near 50 or so</p>

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1 cases that had been presented to the embassy that
2 they had not -- that they had not interviewed yet.
3 Myself, Mr. Schultz and, I believe,
4 Mr. Maddox had an interview with the deputy chief
5 of mission and also counselor staff to prompt them
6 to interview those cases immediately thereafter
7 the following --
8 Q I'm sorry. So, again, I'm going to stop
9 you so we can --
10 A Sure.
11 Q When was the meeting with the counselor
12 staff?
13 A I believe it was end of April, maybe May.
14 Q Okay.
15 A Yeah.
16 Q All right. Please proceed.
17 A Sure. We had that -- we had that meeting
18 and, shortly thereafter, within a week or two
19 weeks, the embassy agreed to conduct -- to conduct
20 interviews for all the cases that we had presented
21 during the months of March, April and May.
22 We coordinated with the Atlanta field
23 office to use some of their detention space to
24 hold the aliens for a limited amount of time to
25 conduct the interviews.

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1 I had Mr. Maddox fly out to -- to the
2 region and meet up with Mr. Al-Anpaqi to visit the
3 Stewart detention center where the aliens were
4 detained to interview those aliens.
5 Q Okay. And then what was the next step in
6 the process?
7 A The aliens were interviewed and -- the
8 aliens were interviewed and, you know,
9 Mr. Al-Anpaqi reported the results back to
10 Baghdad.
11 Q And then what happened after those results
12 were reported to Baghdad?
13 A So, 42 cases were ultimately transferred
14 over to Stewart out of the 50 or so cases that had
15 been presented to them. And during the time that
16 they had -- that they had been waiting -- awaiting
17 interview with the embassy, a number of cases had
18 submitted motions to reopen, I believe, untimely
19 appeals, and had actually been put back into
20 removal proceedings as a result of those actions.
21 So, they were no longer on the table. So, only
22 42 cases were ultimately transferred over to
23 Stewart.
24 And all aliens were interviewed. As I
25 recall it, 33 cases had travel documents issued

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1 within a week or two after the -- the conclusion
2 of those interviews. Three aliens were -- their
3 citizenship status as Iraqi nationals was in
4 question, and six aliens had refused to sign the
5 GOI form.
6 Q Who from the GOI conducted the interviews
7 in May 2018?
8 A Yarub Al-Anpaqi.
9 Q Was there anybody else?
10 A Not to my awareness. I don't believe
11 there was.
12 Q And you would know if somebody else was
13 partaking in the interviews because you would have
14 had to obtain their security clearance to get into
15 the facility?
16 A Correct. Yeah. It was just -- it was
17 just Mr. Al-Anpaqi. Again, I was not personally
18 present for those interviews, it was Mr. Maddox,
19 but he did not report to me anybody else who
20 staffed those interviews.
21 Q Do you know if at any time during those
22 interviews any other individuals were in the room
23 besides Mr. Al-Anpaqi and the Iraqi national?
24 A Not that -- not that I'm aware of. Not
25 that I'm aware of. I -- perhaps some contractors,

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1 contract detention staff that needed to be there
2 by virtue of their safety and security, but to my
3 knowledge, it was only Mr. Al-Anpaqi and the
4 detainee.
5 Q Do you know if ICE submitted 280 TD
6 presentations back in May through June 2017?
7 A I'm not aware of that.
8 Q So, you don't know for the individuals
9 that were interviewed in May 2018 if travel
10 document presentations were previously submitted
11 for these individuals?
12 A I -- I'm not aware of that.
13 Q Would their files reflect if travel
14 document presentations were submitted back in May
15 or June 2017?
16 A Potentially, however, I did not personally
17 review every alien's file.
18 Q When you were getting up to speed after
19 becoming unit chief, did Mr. Schultz or
20 Mr. Clinton inform you that 280 travel
21 presentations had been made for Iraqi nationals in
22 May and June 2017?
23 A Not that I recall. I just remember
24 conversations about the manifests.
25 Q What types of travel documents were issued

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<p style="text-align: right;">Page 73</p> <p>1 for the individuals that were interviewed in 2 May 2018?</p> <p>3 A To my awareness, they were 4 laissez-passers. They were onetime use travel 5 documents.</p> <p>6 Q And, typically, for the Iraqi Government, 7 how long does that -- what's the expiration date 8 for those types of documents?</p> <p>9 A I believe it's six months.</p> <p>10 Q Has there been instances in which the 11 document's expiration date exceeded six months?</p> <p>12 A Not that I'm aware of but, then again, I 13 have not reviewed every travel document personally 14 that has been issued.</p> <p>15 Q Okay. You indicated that there were three 16 individuals in which there was a determination 17 that they may not be Iraqi citizens; is that 18 correct?</p> <p>19 A Correct.</p> <p>20 Q What's the next step for those three 21 Iraqis?</p> <p>22 A We --</p> <p>23 Q Sorry. Let me rephrase that. What's the 24 next step for those three individuals?</p> <p>25 A Well, the Iraqi Government, you know,</p>	<p style="text-align: right;">Page 75</p> <p>1 A Yeah.</p> <p>2 Q What are the individuals' names?</p> <p>3 A I don't recall offhand. The one alien 4 that I do remember his name is the one with the 5 alias and he is using the name of George Arthur.</p> <p>6 Q Is that the individual that was arrested 7 on the beach?</p> <p>8 A Yes.</p> <p>9 Q If the -- for these individuals, if, after 10 ICE submits travel document presentations to these 11 other countries and those countries come back 12 indicating that they're not their citizens, what 13 happens next?</p> <p>14 A Usually we will re-present the case to the 15 Iraqis or whichever government we are dealing 16 with, if we are speaking generally, and ask them 17 to take a second look at the case. We will 18 usually garner the support of Department of State, 19 their assets abroad, to present the case to 20 Baghdad or any other government that we have some 21 sort of indicia of potential citizenship of and 22 seek travel documents through those means, as 23 well.</p> <p>24 Essentially, we take a second bite at the 25 apple with any country that we think the alien may</p>
<p style="text-align: right;">Page 74</p> <p>1 Mr. Al-Anpaqi indicated that he believed that one 2 of the aliens was Syrian, one of the aliens was 3 Palestinian, and the other was Kuwaiti, so, we are 4 seeking travel document requests from those 5 respective governments.</p> <p>6 For one alien, and I can't recall if it 7 was the alien who was noted to potentially be 8 Palestinian or Syrian, we do believe that person 9 to actually be an Iraqi national; however, during 10 his arrest by the border patrol, I understand that 11 to have occurred on a beach and he had zero 12 iden -- identification documents, any documents to 13 his name, and is using an alias while in 14 detention.</p> <p>15 And we are currently using our abroad 16 personnel in Europe to investigate various 17 locations that he resided in in Europe to see 18 whether or not he had documents that were 19 submitted to those governments during his presence 20 there. So, we are acquiring travel documents 21 through other means.</p> <p>22 Q So, did you just discuss four individuals 23 there?</p> <p>24 A It was three individuals.</p> <p>25 Q Three.</p>	<p style="text-align: right;">Page 76</p> <p>1 have some indicia of citizenship or connection to. 2 We'll also seek third county removal options, as 3 well.</p> <p>4 Q If both of those efforts are unsuccessful, 5 what happens next?</p> <p>6 A We'll take a look at the circumstances of 7 each case, the facts of each case, to include, you 8 know, criminal history, immigration history, 9 travel document acquisition efforts, and make a 10 custody determination based off of that.</p> <p>11 Q Is that a SLRRFF analysis?</p> <p>12 A Correct.</p> <p>13 Q All right. Let's go back to the six 14 that refused to sign the GOI form. And you're 15 referring to the form that's at Exhibit 10; 16 correct?</p> <p>17 A Correct.</p> <p>18 Q All right. What's the next steps in the 19 efforts to remove those individuals?</p> <p>20 A The -- we ask the Iraqi Embassy what our 21 options were in terms of acquiring a travel 22 document without the GOI form being filled out and 23 submitted by the detainee. They indicated that we 24 could write them a letter indicating limited 25 biographical information associated with the</p>

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<p style="text-align: right;">Page 77</p> <p>1 alien, to include their alien registration number, 2 I also believe date of birth, the issuance of 3 their -- their final order of removal, any 4 criminal history that they may have in the United 5 States, and also indicate that their final 6 order -- in the body of the letter, that their 7 final order is, in fact, administratively final 8 and that it nullifies any potential legal status 9 that they may have had in the United States prior 10 to the issuance of that final order, and -- and 11 they would submit that to Baghdad and that would 12 circumvent the need for a GOI form being 13 completed. 14 Q So, the letter that you're discussing, is 15 that at Exhibit 3? 16 A That was the original iteration, the 17 document in Exhibit 3 that you're referring to, 18 that was the original iteration of the letter, 19 however, they reviewed it and they wanted -- the 20 Iraqi Embassy reviewed that letter. They wanted 21 additional information relating to the facts that 22 I had just previously elaborated upon and that the 23 administratively final order of removal nullified 24 any legal status to the aliens, you know, 25 previously held legal status in the United States,</p>	<p style="text-align: right;">Page 79</p> <p>1 with -- with those three in the room. 2 Q What was the date of that meeting? 3 A I -- I believe it was -- it was sometime 4 at the end of June or perhaps July 1st. I can't 5 remember offhand. 6 Q And what took place during that meeting? 7 A We -- we discussed the body of -- I 8 believe it was Exhibit 3 at the time or another 9 iteration of that letter. We discussed the 10 contents of that letter, what they were expecting 11 in the letter in terms of additional information 12 related to the alien's immigration history in the 13 United States. That way we can provide them a -- 14 what they felt would be a sound letter to 15 circumvent the need for the GOI form. 16 Q And what else happened at that meeting? 17 A They reviewed the letter. They elaborated 18 upon what they needed from us, and we made 19 modifications accordingly based off of that, the 20 meeting that we had with them. 21 Q Anything else happen at the meeting? 22 A Not that I can recall. 23 Q Did -- was there a discussion about the 24 GOI form? 25 A We did indicate to them that the GOI form,</p>
<p style="text-align: right;">Page 78</p> <p>1 and -- and elaborate that in the body of the 2 letter and submit it to their office. 3 Q Okay. And when was that submitted to the 4 office? 5 A It was submitted at the beginning of this 6 month, I believe, on June -- or I'm sorry, 7 July 2nd. 8 Q And when did Iraq indicate to you that the 9 June 15th, 2018 letter was not sufficient, the 10 letter in Exhibit 3? 11 A Yeah, it -- yeah, let me just try to 12 refresh my memory. Sorry. I'm just sorting out 13 dates in my mind. I believe it was -- I don't 14 remember the date offhand. I believe it was at 15 the end of June -- either end of June or maybe the 16 first of July. 17 Q And who indicated that to you? 18 A That was the ambassador of Iraq to the 19 United States, the deputy chief of mission, and 20 also Mr. Al-Anpaqi who was present during that 21 meeting. 22 Q So, did they communicate directly to you 23 or was it through others in the U.S. Government? 24 A No, it was during a meeting that I 25 personally had with Mr. Schultz and Mr. Maddox</p>	<p style="text-align: right;">Page 80</p> <p>1 you know, as we had previously indicated to them, 2 was not something that ICE felt was necessary 3 to -- to issue a travel document for each case and 4 that we did not want to use it going forward, in 5 which the Iraqis said that, you know, given the 6 contents of the modified and edited letter based 7 off of our discussion would circumvent the need 8 for the GOI form going forward. 9 Q For those six individuals or for 10 everybody? 11 A Everybody. 12 Q Did the Iraqi officials indicate that they 13 would no longer ask Iraqi nationals if they 14 desired to go back to Iraq? 15 A We did not -- we did not explicitly ask 16 them that question. My perception of the meeting 17 is that the inference was there based off their 18 discontinuance of the use of the GOI form. 19 Q But you did not ask that question; 20 correct? 21 A No. 22 Q And they did not give you a statement to 23 that effect; correct? 24 A We did not explore that with them. 25 Q They did not give you a statement to that</p>

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<p>1 effect; correct?</p> <p>2 A Correct.</p> <p>3 Q When are you expecting a response from the</p> <p>4 Iraqi Government relating to these six</p> <p>5 individuals?</p> <p>6 A Today.</p> <p>7 Q Has it come in yet?</p> <p>8 A Well, let me back -- back up on that. We</p> <p>9 have already received a positive response relating</p> <p>10 to the travel document issuance for these cases.</p> <p>11 Q What was that response?</p> <p>12 A That they would issue travel documents</p> <p>13 based off of the fact that we've provided a</p> <p>14 letter. We're supposed to pick up those travel</p> <p>15 documents today.</p> <p>16 Q What do you mean by "pick up today"?</p> <p>17 A Physically receive those travel documents</p> <p>18 in hand by ICE personnel.</p> <p>19 Q Okay. And who indicated to you that the</p> <p>20 travel documents would be issued?</p> <p>21 A Mr. Al-Anpaqi and also, I believe, the</p> <p>22 deputy -- the deputy chief of mission had a</p> <p>23 conversation with Mr. Schultz that Mr. Schultz</p> <p>24 communicated to me indicating that those cases</p> <p>25 would -- those cases would be issued travel</p>	<p>1 get travel documents in the next, say -- let me</p> <p>2 rephrase that.</p> <p>3 If you don't get the travel documents</p> <p>4 tomorrow, at what point are you going to conduct</p> <p>5 the SLRRFF analysis of these individuals?</p> <p>6 A At the next point in which it is -- it is</p> <p>7 required by regulation to conduct those --</p> <p>8 those -- those -- that SLRRFF analysis. That is</p> <p>9 generally at the 90-day mark after the previous</p> <p>10 analysis was conducted.</p> <p>11 Q Have you done a SLRRFF analysis for these</p> <p>12 six individuals already?</p> <p>13 A I -- if they are detained after 180 days</p> <p>14 in detention, then I most likely have. I just</p> <p>15 don't recall it -- their names offhand. I sign a</p> <p>16 lot of SLRRFF analysis, not just for Iraq but for</p> <p>17 a number of other countries.</p> <p>18 Q I think you mentioned earlier that as part</p> <p>19 of your SLRRFF analysis, you will take a look at</p> <p>20 the criminal history; is that correct?</p> <p>21 A Correct.</p> <p>22 Q Why would you look at the criminal</p> <p>23 history?</p> <p>24 A Under 8 CFR 241.14D, we can categorize</p> <p>25 aliens as especially dangerous. It's an avenue</p>
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<p>1 documents.</p> <p>2 Q Okay. And what specifically did</p> <p>3 Mr. Al-Anpaqi say to you?</p> <p>4 A That the travel documents would be ready</p> <p>5 this Friday.</p> <p>6 Q And, so, what happens if the travel</p> <p>7 documents are not ready today?</p> <p>8 A We will revisit that topic with them</p> <p>9 continuously until they are.</p> <p>10 Q And at what point will you stop revisiting</p> <p>11 that issue if you can't get them to issue the</p> <p>12 travel documents?</p> <p>13 A I don't want to say that there's any</p> <p>14 hardline date or hardline number of contacts that</p> <p>15 we will have with them. We will -- we will</p> <p>16 revisit that topic with them continuously, and if</p> <p>17 we have to explore other means in which to obtain</p> <p>18 those travel documents, we will pursue that.</p> <p>19 Q And what other means are you referencing?</p> <p>20 A Any -- well, we'll confer with Department</p> <p>21 of State but that could be any -- any sort of</p> <p>22 punitive actions taken against them that</p> <p>23 Department of State would recommend to us.</p> <p>24 Q At what point would you conduct the SLRRFF</p> <p>25 analysis for these six individuals if you cannot</p>	<p>1 that we -- and it's for an indefinite detention</p> <p>2 based off of criminal history, terrorist ties,</p> <p>3 essentially anything that would make an alien a --</p> <p>4 a unique danger to the public. It's an authority</p> <p>5 that ICE is -- uses very sparingly, but it is</p> <p>6 something that we have to factor into our SLRRFF</p> <p>7 analysis.</p> <p>8 Q For the Iraqi nationals that are currently</p> <p>9 in detention and they've exceeded 180 days, you</p> <p>10 believe you've done a SLRRFF analysis; is that</p> <p>11 correct?</p> <p>12 A I do believe so.</p> <p>13 Q For those individuals, do you remember if</p> <p>14 you evaluated their criminal history and</p> <p>15 determined that they should not be released based</p> <p>16 upon the criminal history?</p> <p>17 A For those aliens, I would have done a</p> <p>18 SLRRFF analysis based on the viability of</p> <p>19 obtaining a travel document.</p> <p>20 Q But not looking at the criminal history?</p> <p>21 A I would have looked at the criminal</p> <p>22 history, as well. I would have looked at the</p> <p>23 totality of the case. However, given that I</p> <p>24 cannot recall any sort of unique instance that</p> <p>25 sort of, you know, reared its head at me related</p>

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<p style="text-align: right;">Page 85</p> <p>1 to their criminal history or, you know, past</p> <p>2 history that would make the alien a unique danger</p> <p>3 to the public, I have to presume that my analysis</p> <p>4 was based predominantly off of their -- the</p> <p>5 viability of obtaining a travel document.</p> <p>6 Q On what date did Mr. Al --</p> <p>7 A Al-Anpaqi?</p> <p>8 Q Thank you. On what date did Mr. Al-Anpaqi</p> <p>9 indicate to you that travel documents for the six</p> <p>10 individuals would be issued?</p> <p>11 A I believe it was Monday or Tuesday of this</p> <p>12 week. I'd have to check my email. I'm not</p> <p>13 entirely sure.</p> <p>14 Q So, when you were at the meeting in the</p> <p>15 end of July -- end of June/early July, in which</p> <p>16 you were talking with the Iraqi Government about</p> <p>17 the GOI form --</p> <p>18 A Uh-huh.</p> <p>19 Q -- and they indicated that they were not</p> <p>20 going to use the GOI form going forward --</p> <p>21 correct?</p> <p>22 A Uh-huh.</p> <p>23 Q -- did you believe them?</p> <p>24 A Yes.</p> <p>25 Q Have they indicated to you before that</p>	<p style="text-align: right;">Page 87</p> <p>1 Q And what was their response to you?</p> <p>2 A That they felt that it was just something</p> <p>3 that was voluntarily signed by them, that, you</p> <p>4 know, it is something that they could -- that they</p> <p>5 could -- that the aliens could sign on their own</p> <p>6 volition, they weren't forcing them to sign it,</p> <p>7 et cetera.</p> <p>8 Q And what did they indicate was the purpose</p> <p>9 for offering the form to the Iraqi nationals to</p> <p>10 sign?</p> <p>11 A They didn't -- and, again, this was a</p> <p>12 meeting that we had in January, but I don't recall</p> <p>13 them expressly indicating any -- any reason, any</p> <p>14 hardline reason, why they wanted it. It was just</p> <p>15 something that was communicated to us as part of</p> <p>16 their travel document issuance process.</p> <p>17 Q Did they indicate to you that they -- they</p> <p>18 required that document in order to be able to</p> <p>19 issue travel documents to an Iraqi national?</p> <p>20 A That's how they originally characterized</p> <p>21 it to us.</p> <p>22 Q When did they originally characterize it</p> <p>23 to you as that?</p> <p>24 A As I recall, it was in back in January</p> <p>25 of 2018.</p>
<p style="text-align: right;">Page 86</p> <p>1 they would -- they wouldn't use the GOI form?</p> <p>2 A They have -- they have not expressly</p> <p>3 indicated that they would not use the GOI form.</p> <p>4 They've always characterized it as a form that the</p> <p>5 alien could voluntarily sign.</p> <p>6 Q Have you asked them in the past not to use</p> <p>7 the GOI form?</p> <p>8 A We've expressed a -- a lack of desire for</p> <p>9 them to not use that form.</p> <p>10 Q And did they -- so, when you say you</p> <p>11 expressed a lack of desire, was it also a request</p> <p>12 not to use it?</p> <p>13 A We told them that it was a violation of</p> <p>14 the International Civil Aviation Organization's</p> <p>15 Annex 9 protocols on travel document issuance,</p> <p>16 that an alien doesn't expressly have to submit</p> <p>17 themselves to deportation voluntarily; they could</p> <p>18 be deported by a foreign government, you know,</p> <p>19 even if it was against their will, and we</p> <p>20 expressed that sentiment to them.</p> <p>21 Q So, you wouldn't identify that as a</p> <p>22 request not to use the form?</p> <p>23 A I would -- I would identify it as a -- as</p> <p>24 a level of consternation associated with the use</p> <p>25 of that form.</p>	<p style="text-align: right;">Page 88</p> <p>1 Q Okay. And since then, they've changed</p> <p>2 that characterization?</p> <p>3 A They have. They -- they've told us that</p> <p>4 they no longer need the form to be filled out as a</p> <p>5 result of the -- the enhanced level of information</p> <p>6 that we're giving them related to the -- the</p> <p>7 alien's background via the letters that you have.</p> <p>8 Q Okay. So, I don't understand what you</p> <p>9 just said.</p> <p>10 A Uh-huh.</p> <p>11 Q Okay? Because we were just talking about</p> <p>12 requiring a form to issue travel documents.</p> <p>13 A Uh-huh.</p> <p>14 Q And I think that you were responding to</p> <p>15 something different than --</p> <p>16 A Okay.</p> <p>17 Q -- the obtaining of travel documents.</p> <p>18 A Uh-huh.</p> <p>19 Q So -- and it may just be I don't</p> <p>20 understand the language.</p> <p>21 A Okay.</p> <p>22 Q Okay? So, has the Iraqi Government said</p> <p>23 to you that if that form is not signed out, we</p> <p>24 will still issue travel documents?</p> <p>25 A Yes, they have.</p>

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<p style="text-align: right;">Page 89</p> <p>1 Q When did they say that to you?</p> <p>2 A The end of June/beginning of July.</p> <p>3 Q And who said that to you?</p> <p>4 A The ambassador, the deputy chief of</p> <p>5 mission, and also Mr. Al-Anpaqi, the counselor</p> <p>6 officer.</p> <p>7 Q Did they say to you, "If an Iraqi national</p> <p>8 says they do not want to go back to Iraq, we will</p> <p>9 still issue travel documents"?</p> <p>10 A Yes.</p> <p>11 Q And who said that to you?</p> <p>12 A That was the ambassador, the deputy chief</p> <p>13 of mission, Mr. Al-Anpaqi.</p> <p>14 Q And what exactly did they say?</p> <p>15 A I don't remember exactly what they said</p> <p>16 verbatim; however, I do recall them saying that it</p> <p>17 would no longer be necessary as a result of the</p> <p>18 letters that we would be providing them.</p> <p>19 Q What would no longer be necessary?</p> <p>20 A The GOI form.</p> <p>21 Q So, they didn't actually say to you that</p> <p>22 if an individual expresses they don't want to go</p> <p>23 back to Iraq, they will still issue travel</p> <p>24 documents?</p> <p>25 A Again, that was something that we</p>	<p style="text-align: right;">Page 91</p> <p>1 A Yeah, yeah, yeah, definitely.</p> <p>2 Q Okay. Is it possible that you testified</p> <p>3 earlier that there was a meeting or a</p> <p>4 communication made 2018 where they indicated there</p> <p>5 were issued travel documents?</p> <p>6 MR. SILVIS: Object to the form.</p> <p>7 Q That's fine. You can go ahead and answer.</p> <p>8 A Yeah.</p> <p>9 MR. SILVIS: Yeah, you can go ahead.</p> <p>10 Q He's just telling me my question is bad,</p> <p>11 but I don't know how else to ask it.</p> <p>12 MR. SILVIS: I guess the concern I had is</p> <p>13 you said, "Is it possible that you testified</p> <p>14 earlier."</p> <p>15 BY MS. SCOTT:</p> <p>16 Q All right. So, that's fine. Go ahead.</p> <p>17 You can answer.</p> <p>18 A Okay. So, I believe what I was referring</p> <p>19 to in that instance is that we had discussions</p> <p>20 with a -- the Iraqis in either the end of April or</p> <p>21 in May of 2018. I do recall having some sort of</p> <p>22 meeting around that time frame -- I don't recall</p> <p>23 whether or not it was in April or May of 2018 --</p> <p>24 where we had indicated that there was a large</p> <p>25 volume of cases that had accumulated with the</p>
<p style="text-align: right;">Page 90</p> <p>1 didn't -- we didn't explicitly ask them. The</p> <p>2 conversation centered around the GOI form.</p> <p>3 Q Did you say that there was a meeting in</p> <p>4 May 2018 with the Iraqi Government?</p> <p>5 A Potentially. That was a month that I</p> <p>6 couldn't remember if we did have one.</p> <p>7 Q Okay. Was there a meeting prior to --</p> <p>8 MS. SCHLANGER: It doesn't matter.</p> <p>9 BY MS. SCOTT:</p> <p>10 Q Okay. So, here's where I'm a little</p> <p>11 confused.</p> <p>12 A Okay.</p> <p>13 Q I'm trying to go back to when we first</p> <p>14 were talking about the May 2018 and the process</p> <p>15 for travel document acquisition and review, and I</p> <p>16 thought you might have mentioned that there was a</p> <p>17 meeting prior to the -- that process starting.</p> <p>18 Were you referring to the January 2018 meeting?</p> <p>19 A Correct.</p> <p>20 Q Okay.</p> <p>21 A Yeah.</p> <p>22 Q All right. Okay. I'm not trying to trick</p> <p>23 you.</p> <p>24 A Uh-huh.</p> <p>25 Q I just want to be thorough.</p>	<p style="text-align: right;">Page 92</p> <p>1 Iraqi Embassies -- with the Iraqi Embassy and that</p> <p>2 they needed to interview them as promptly as they</p> <p>3 could.</p> <p>4 Q Okay. Thank you.</p> <p>5 A Uh-huh.</p> <p>6 Q So, for clarification, so that I need to</p> <p>7 get this into the record, you believe that there</p> <p>8 was a meeting with the Iraqi Government in April</p> <p>9 or May to talk about 50 individuals who had</p> <p>10 outstanding travel document presentations --</p> <p>11 A Correct.</p> <p>12 Q -- correct?</p> <p>13 A There was a meeting. I know that for a</p> <p>14 fact. You know, it's not something that I</p> <p>15 believe. We did have a meeting with them. I just</p> <p>16 don't know whether or not it was in April or May</p> <p>17 offhand.</p> <p>18 Q And who attended that meeting?</p> <p>19 A It was myself, Mr. Maddox and Mr. Schultz.</p> <p>20 Q And who attended on behalf of the Iraqi</p> <p>21 Government?</p> <p>22 A I believe it was the deputy chief of</p> <p>23 mission and also Mr. Al-Anpaqi.</p> <p>24 Q Do you remember -- do you know the name of</p> <p>25 the deputy chief?</p>

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<p style="text-align: right;">Page 93</p> <p>1 A I do. I did get that during our break.</p> <p>2 Let me pull that up right now. So, his name is</p> <p>3 Al-Quraishi Mohamad Jawad. And I can help you out</p> <p>4 with spelling after -- during our break --or can I</p> <p>5 help you out with spelling right now? His first</p> <p>6 name is A-l-q-u-r-a-i-s-h-y. His middle name is</p> <p>7 Mohamad, M-o-h-a-m-a-d. And his last name is</p> <p>8 Jawad. That is J-a-w-a-d.</p> <p>9 Q Thank you. Okay. Is it possible that</p> <p>10 Mohamad might be his first name?</p> <p>11 A Potentially. I don't know. I'll have to</p> <p>12 take a look at his business card when I get back.</p> <p>13 That's what Mr. Schultz emailed me.</p> <p>14 Q Okay. So, let me show you this document.</p> <p>15 So, I'm going to point you to Exhibit 9. And it's</p> <p>16 marked as 270499.</p> <p>17 (J. Schultz Exhibit 9, previously marked,</p> <p>18 is attached to the transcript.)</p> <p>19 Q You can take a look and see if the</p> <p>20 individual that you just referenced is on that</p> <p>21 page.</p> <p>22 A Yeah, that is him.</p> <p>23 Q Okay. Can you say what that name is.</p> <p>24 A Mohamad Al-Quraishi.</p> <p>25 Q And then after his name, there's the</p>	<p style="text-align: right;">Page 95</p> <p>1 A Based off the fact that we had already had</p> <p>2 a number of -- of Iraqi nationals who requested</p> <p>3 prompt removal from the United States and we were</p> <p>4 making -- taking steps to get those interviews</p> <p>5 established and, you know, travel documents be</p> <p>6 issued as a result.</p> <p>7 Q At the time that you wrote this, had any</p> <p>8 travel documents for those prompt removals been</p> <p>9 issued?</p> <p>10 A No. We were barely in the phase of</p> <p>11 organizing and coordinating those interviews to</p> <p>12 occur.</p> <p>13 Q At the time of this declaration, had any</p> <p>14 prompt removals been returned to Iraq?</p> <p>15 A No. Again, the -- the tranche of aliens</p> <p>16 available characterized as a prompt removal was</p> <p>17 rather limited, and we were taking steps to get</p> <p>18 them interviewed.</p> <p>19 Q Okay. Was there any other basis for the</p> <p>20 belief that the Central Government in Iraq -- of</p> <p>21 Iraq in Baghdad would accept removal of Iraqi</p> <p>22 nationals?</p> <p>23 A They had expressed to, you know,</p> <p>24 Mr. Schultz and Mr. Clinton in the past and during</p> <p>25 the negotiation process that had preceded that,</p>
<p style="text-align: right;">Page 94</p> <p>1 initials --</p> <p>2 A DCM, deputy chief of mission.</p> <p>3 Q All right. Thank you. Okay. And now she</p> <p>4 would like you to respell it, please.</p> <p>5 A Sure thing. His name is -- first name is</p> <p>6 M-o-h-a-m-e-d. And the last name as it's</p> <p>7 presented in this document is Al-Quraishi. That</p> <p>8 is A-l-q-u-r-a-i-s-h-i.</p> <p>9 Q All right. So, I did realize we have one</p> <p>10 more question about the declaration, and then we</p> <p>11 will push that to the side.</p> <p>12 A Sure.</p> <p>13 Q Are you ready?</p> <p>14 A Oh, yeah. I'm ready. Sorry.</p> <p>15 Q So, paragraph 12, your declaration states,</p> <p>16 "ICE believes that the Central Government of Iraq</p> <p>17 in Baghdad will permit the entry of detained Iraqi</p> <p>18 nationals subject to final orders of removal if</p> <p>19 the injunction is limited."</p> <p>20 Do you believe at the time you wrote this</p> <p>21 declaration that Baghdad would re- -- allow</p> <p>22 repatriation of individuals once the injunction</p> <p>23 was limited?</p> <p>24 A Yes, I did believe that at the time.</p> <p>25 Q And what did you base your belief upon?</p>	<p style="text-align: right;">Page 96</p> <p>1 those prompt removals from being identified, as</p> <p>2 accepting all of their final order cases, and I</p> <p>3 had no other reason to believe otherwise.</p> <p>4 Q And we previously identified -- defined</p> <p>5 what -- the term "prompt removal" in this</p> <p>6 deposition.</p> <p>7 A Yes.</p> <p>8 Q Can you provide that definition again.</p> <p>9 A It's essentially any alien that had</p> <p>10 voluntarily recused themselves from the -- from</p> <p>11 the injunction.</p> <p>12 Q All right. So, would a person who had</p> <p>13 indicated that they wanted to be removed to Iraq</p> <p>14 who was a class -- Hamama class member be deemed</p> <p>15 to be a prompt removal?</p> <p>16 A Can you repeat that.</p> <p>17 Q Sure. There is various phases in order to</p> <p>18 have the stay lifted; correct?</p> <p>19 A Uh-huh. Uh-huh. Uh-huh.</p> <p>20 Q The Iraqi national, the class member --</p> <p>21 A Uh-huh.</p> <p>22 Q -- has to indicate that they want to --</p> <p>23 A Uh-huh.</p> <p>24 Q -- be removed. And do you understand that</p> <p>25 at that point, then there needs to be an order</p>

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<p style="text-align: right;">Page 97</p> <p>1 from the Court to lift that removal --</p> <p>2 A I do.</p> <p>3 Q -- stay?</p> <p>4 A For each case and for each Iraqi case that</p> <p>5 we identify as a prompt removal, we usually confer</p> <p>6 with counsel beforehand to identify any potential</p> <p>7 impediments to removal and -- and go forward with</p> <p>8 the interviews accordingly.</p> <p>9 Q Okay. So, at what point in that process</p> <p>10 do -- does ICE start the -- well, travel document</p> <p>11 acquisition process?</p> <p>12 A After an alien has been identified as a</p> <p>13 prompt removal?</p> <p>14 Q Right. So, when an alien -- let</p> <p>15 me start -- when a Hamama class member indicates</p> <p>16 that they want to be removed to Iraq --</p> <p>17 A Correct.</p> <p>18 Q -- does ICE start the travel document</p> <p>19 acquisition process then?</p> <p>20 A No, we usually will wait until that alien</p> <p>21 is -- is removed from the class.</p> <p>22 Q What do you mean, "removed from the</p> <p>23 class"?</p> <p>24 A Is no longer part of the Hamama</p> <p>25 litigation, part of the Hamama class, that they</p>	<p style="text-align: right;">Page 99</p> <p>1 Q And then the field officer then reports</p> <p>2 that back to ICE; is that correct?</p> <p>3 A They will report it, I believe, to their</p> <p>4 local chief counsel. And how the process sort of</p> <p>5 plays out after that, I'm not entirely sure. I do</p> <p>6 know that our headquarters office gets involved,</p> <p>7 and that's who we will confer with in order to</p> <p>8 identify any impediments to removal, and that is</p> <p>9 inclusive of this litigation, the Hamama</p> <p>10 litigation, and anything else that we may not be</p> <p>11 aware of, such as a motion to reopen or an</p> <p>12 untimely appeal that's filed.</p> <p>13 Q Has it happened that for some of these</p> <p>14 individuals, that the travel document acquisition</p> <p>15 process may have started before the Court enters</p> <p>16 an order approving the removal to Iraq?</p> <p>17 A Not that I'm aware of, no. Not that I'm</p> <p>18 aware of.</p> <p>19 Q And, so, just so that we're careful going</p> <p>20 forward, when I talk about prompt removal, I talk</p> <p>21 about those individuals that actually have an</p> <p>22 order entered --</p> <p>23 A Uh-huh.</p> <p>24 Q -- approving or authorizing the removal.</p> <p>25 A Correct.</p>
<p style="text-align: right;">Page 98</p> <p>1 have taken the steps for, you know, a -- I believe</p> <p>2 it's a district judge in this case who is making</p> <p>3 these decisions, for that person -- to excuse that</p> <p>4 person from the class based on their voluntary</p> <p>5 willingness to be pulled out of -- pulled out of</p> <p>6 the litigation.</p> <p>7 Q So, I am almost certain that you don't</p> <p>8 know that the parties dispute the term "removed</p> <p>9 from the class."</p> <p>10 A Okay.</p> <p>11 Q So, for this deposition --</p> <p>12 A Uh-huh.</p> <p>13 Q -- we're going to stick with the term</p> <p>14 "prompt removal" --</p> <p>15 A Okay.</p> <p>16 Q -- because petitioners don't agree that a</p> <p>17 prompt removal is the equivalent of being removed</p> <p>18 from the class.</p> <p>19 A Okay.</p> <p>20 Q So, when a person indicates that they want</p> <p>21 to be removed to Iraq --</p> <p>22 A Uh-huh.</p> <p>23 Q -- typically they will indicate that to a</p> <p>24 field officer; correct?</p> <p>25 A Uh-huh. Correct.</p>	<p style="text-align: right;">Page 100</p> <p>1 Q What other countries authorize the use of</p> <p>2 manifests, flight manifests, rather than travel</p> <p>3 documents?</p> <p>4 MR. SILVIS: Object to relevance.</p> <p>5 Q You can still answer.</p> <p>6 A So, I supervise the travel document</p> <p>7 acquisition liaison efforts for 43 countries, you</p> <p>8 know, all within the Middle East, Eastern Africa,</p> <p>9 Southeast Asia. None that are currently under my</p> <p>10 purview facilitate removals in that manner. I</p> <p>11 cannot speak for the other REO units who handle</p> <p>12 travel document liaison acquisition efforts.</p> <p>13 Q So, in paragraph 12 of Exhibit 25, you</p> <p>14 write -- you state, "ICE believes that the</p> <p>15 government will permit the entry of detained Iraqi</p> <p>16 nationals." Why didn't you write, "I believe"?</p> <p>17 A Which paragraph are you referring to?</p> <p>18 Q Paragraph 12.</p> <p>19 A Okay. I mean, as a representative, as an</p> <p>20 employee of ICE, I -- I include myself in that</p> <p>21 statement.</p> <p>22 Q But did you -- did you confer with</p> <p>23 Mr. Schultz's supervisor to confirm that they have</p> <p>24 the same belief?</p> <p>25 A I conferred just with Mr. Schultz and my</p>

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<p style="text-align: right;">Page 101</p> <p>1 staff. I did not confer, to my awareness, with 2 anyone else. 3 Q Are you allowed to speak on behalf of ICE, 4 in general? 5 A Can you clarify the question a bit. 6 Q Sure. Are you allowed to speak on behalf 7 of ICE in a public arena? 8 A When authorized to do so. I mean it 9 really depends on the forum. 10 Q So, do you think it was sufficient to 11 speak solely to Mr. Schultz and Mr. Clinton and 12 then to translate that into what ICE's position or 13 belief is about what will happen with Iraqi 14 nationals? 15 A I -- given that my unit handles travel 16 document acquisition efforts for Iraq and a number 17 of other countries, I believe it's appropriate for 18 me to do so. 19 Q As of December 2017, had Iraq stated that 20 they would accept Iraqi nationals after the 21 injunction is lifted? 22 A They had stated that they would accept all 23 final order nationals, so -- 24 Q And when did they state that? 25 A They had stated it in -- in conversations</p>	<p style="text-align: right;">Page 103</p> <p>1 A Yeah, I do. Can you just restate it, 2 though, just so it's fresh in my mind. 3 Q Sure. When did an official from the Iraqi 4 Government state to you that they will permit the 5 entry of detained Iraqi nationals once the 6 litigation -- or once the injunction in this 7 litigation is lifted? 8 A They did not explicitly state that to me 9 or anyone else to my knowledge. Again, you know, 10 if it was stated to Mr. Schultz in a separate 11 conversation or Mr. Clinton or anyone else maybe 12 above Mr. Schultz, I don't have knowledge of that. 13 However, given the actions that they took prior to 14 this declaration being authored and the injunction 15 being in place and also actions that have occurred 16 subsequent to the injunction being in place and -- 17 and any actions that have occurred thereafter, we 18 have -- I believe, have had a good relationship 19 with them in terms of travel document issuance. 20 They have conducted interviews. They have 21 issued travel documents. They have done the 22 things that they need to do in order to -- to 23 stand up what we would consider a repeatable 24 process for a travel document issuance and -- and 25 based off of the actions and conversations that we</p>
<p style="text-align: right;">Page 102</p> <p>1 that I had had with them subsequent to -- to 2 December. That was a -- my initial contact with 3 them in January of 2018. And they had 4 communicated to Mr. Schultz and Mr. Clinton prior 5 to that. 6 Q And when did they communicate that 7 prior -- to Mr. Schultz and Mr. Clinton prior to 8 this declaration? 9 A Can you restate that. 10 Q Sure. When did Iraq communicate to 11 Mr. Schultz and Mr. Clinton that they would accept 12 Iraqi nationals when the injunction was removed? 13 A Summer -- when it was removed? I don't 14 believe that they actually stated that. 15 Q Okay. Thank you. 16 A Yeah. 17 Q And have they actually stated that to you 18 since this declaration? 19 A Let me reread paragraph 12, if you don't 20 mind. 21 MR. SILVIS: Could you restate the 22 question, too, or could we have it read back. 23 (Pending question read.) 24 MR. SILVIS: Do you understand the 25 question?</p>	<p style="text-align: right;">Page 104</p> <p>1 have had with them, I have to believe that they 2 will accept a return of their nationals. 3 Q So, my question to you is narrow. All 4 right? My question was when did an official from 5 the Iraqi Government state to you that they would 6 take back -- that they would -- let me go back. 7 When did an Iraqi Government official 8 state to you that they will permit the entry of 9 detained Iraqi nationals once the injunction in 10 this case is lifted? 11 A They -- they did not state that; however, 12 based off their actions and their previous 13 conversations and conversations that we've had 14 with them throughout this process, we don't have 15 any indicia of noncompliance. 16 Q Okay. So, you're still -- so, the answer 17 is they have never made that statement to you or 18 anybody else at ICE that you're aware of. 19 A They have not, but as my declaration 20 states, you know, we believe that the Central 21 Government of Iraq will permit the entry of these 22 detained nationals. 23 Q How much value is your belief? 24 MR. SILVIS: Object to the form. 25 Q I mean would you -- would you write to</p>

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<p style="text-align: right;">Page 113</p> <p>1 Q All right. Let's take a look at 2 Exhibit 15. 3 (J. Schultz Exhibit 15, previously marked, 4 is attached to the transcript.) 5 Q Can you tell me what Exhibit 15 is. 6 A There's no attachment here, but I believe 7 this is the email in which I asked Mr. Clinton to 8 obtain translation services for the GOI form. 9 Q Okay. So, at the very end of this email 10 chain, there's an email from Hudhaifa Hassoon to 11 Yarub Al Anpaqi. 12 A Uh-huh. 13 Q Okay? And it doesn't indicate that 14 there's an attachment here, does it, as far as we 15 can tell. 16 A I think that -- and, again, this is just 17 me interpreting jargon on the first page, but 18 there's a number of -- there's language here 19 stating, you know, "P288571 Iraqi document project 20 details." I have to assume that was information 21 that was included in the -- the application that 22 Mr. Clinton had to sign in order to obtain 23 translation services. 24 Q All right. So, what I'm trying to 25 establish is whether or not Al-Anpaqi sent you an</p>	<p style="text-align: right;">Page 115</p> <p>1 liaison efforts, we will ask different embassies 2 to give us their latest travel document 3 applications. That way, we can upload them to our 4 travel document intranet site. And I have to 5 believe, based on the information presented to me, 6 that that was what we were doing in this instance 7 is just getting updated information from him. 8 Q Okay. At the January 9th, 2018 meeting, 9 did Iraqi Government officials hand you a copy of 10 the GOI form? 11 A I don't recall being handed one, but I do 12 remember them holding a copy of it up. 13 Q So, the question I have is, because 14 Mr. Al-Anpaqi uses the term "new travel document," 15 do you have an idea if there was revisions to the 16 GOI form at this time? 17 A Potentially. I -- I don't recall whether 18 or not that was the case. I mean I had asked 19 Mr. Clinton to remove it from our website. So, it 20 was irrelevant. 21 Q Were there efforts to have the Iraqi -- 22 let me rephrase that. 23 Did ICE make request to the Iraqi 24 Government to amend the GOI form prior to 25 July 2018?</p>
<p style="text-align: right;">Page 114</p> <p>1 attachment -- or sent Julius an attachment 2 during -- in the January 24th, 2018 email below. 3 A It may be possible, and that's what 4 Mr. Clinton may have emailed me, and based off of 5 that attachment that was forwarded to me, I would 6 have asked him to get it translated. But with the 7 information here, I can't really make a 8 100 percent certain determination that that was 9 the case. 10 Q And that's the question I have is because 11 I can't either -- 12 A Okay. 13 Q -- based upon the document. 14 A Yeah. 15 Q But Mr. Al-Anpaqi, in the January 24th, 16 2018 email, states, "As I wish to keep in touch, I 17 would like to update your data for a new travel 18 document form and application that would need all 19 the concerning cases fill and sign them." Do you 20 see that? 21 A Yeah. 22 Q Okay. So, that would suggest that there 23 was an attachment to his email? 24 A Yeah, and that's what I'm basing my 25 presumption off of. You know, during our routine</p>	<p style="text-align: right;">Page 116</p> <p>1 A To amend the GOI form? What do you mean 2 by "amend" it? 3 Q So, edit it, to change it. 4 A No, we had expressed consternation with it 5 and we had discontinued use of it internally to 6 ICE. We had removed it from -- its availability 7 from our website. 8 Q Did the Iraqi Government submit to you any 9 changed versions to the GOI form? 10 A I don't know. Again, anything that 11 occurred after January of 2018, after the meeting 12 that we had with them, was irrelevant in terms of 13 edits to the form, as I had asked that we had -- 14 that we remove it from our website. 15 Q I just want to make sure I'm clear. 16 You're not aware of any changes to the GOI form 17 from January 2018 through July 2nd, 2018; correct? 18 A I -- I'm not. Again, there may have. 19 I'm -- I just don't recall but, again, it just 20 wasn't relevant, so I did not commit it to memory. 21 Q Who would be the person that would know if 22 there was any edits proposed by the government of 23 Iraq to the GOI form? 24 A I don't know. I don't know. I don't 25 believe we ever requested edits to that form.</p>

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<p style="text-align: right;">Page 117</p> <p>1 Q Who would know if the GOI made edits to</p> <p>2 the GOI form and submitted that for review to ICE?</p> <p>3 A I don't know.</p> <p>4 MS. SCOTT: Okay. All right. So, why</p> <p>5 don't we go ahead and take a lunch break.</p> <p>6 MS. MURLEY: Okay. How long?</p> <p>7 MS. SCOTT: 12:15?</p> <p>8 MR. SILVIS: Okay.</p> <p>9 MS. MURLEY: Okay.</p> <p>10 (A recess was taken.)</p> <p>11 BY MS. SCOTT:</p> <p>12 Q All right. Good afternoon, Mr. Bernacke.</p> <p>13 A Good afternoon.</p> <p>14 Q I've got a quick -- few quick questions</p> <p>15 and then we'll get back into the documents.</p> <p>16 In those instances in which a</p> <p>17 laissez-passer is issued --</p> <p>18 A Uh-huh.</p> <p>19 Q -- to an Iraqi national and they go into</p> <p>20 Iraq on a charter commercial flight and that</p> <p>21 commercial flight transits through another</p> <p>22 country, are there any issues because the Iraqi</p> <p>23 national has a laissez-passer?</p> <p>24 A Generally not. Usually we will have to,</p> <p>25 you know -- and it is very subjective to each</p>	<p style="text-align: right;">Page 119</p> <p>1 Farmville.</p> <p>2 Q Have those Iraqi nationals been removed to</p> <p>3 Iraq?</p> <p>4 A The four and the six that I just referred</p> <p>5 to?</p> <p>6 Q Yes.</p> <p>7 A They have not. The six -- the six that</p> <p>8 were interviewed in Stewart, Georgia did receive</p> <p>9 travel documents about 40 minutes ago.</p> <p>10 Q For all six individuals?</p> <p>11 A For all six individuals.</p> <p>12 Q And what type of travel documents were</p> <p>13 issued to them?</p> <p>14 A I don't know. I haven't had a chance to</p> <p>15 personally review them. All I know is that my</p> <p>16 staff reported to me that the six had travel</p> <p>17 documents issued to them.</p> <p>18 Q So, the -- so, let me make sure I</p> <p>19 understand because my question is a little bit</p> <p>20 different.</p> <p>21 A Okay.</p> <p>22 Q So, so far in 2018 --</p> <p>23 A Uh-huh.</p> <p>24 Q -- have any Iraqi nationals been removed</p> <p>25 to Iraq who expressed that they had no desire to</p>
<p style="text-align: right;">Page 118</p> <p>1 country that we would potentially be transiting</p> <p>2 through. Some locations will require transit</p> <p>3 visa. Some will not. Some will have sort of a --</p> <p>4 timelines in which a transit visa is necessary</p> <p>5 depending on the layover time. Some simply do</p> <p>6 not.</p> <p>7 So, it's very subjective and many -- in</p> <p>8 most instances, we will receive those transit</p> <p>9 visas. It's usually not a problem because that is</p> <p>10 not the final port of embarkation.</p> <p>11 Q Okay. Do you know of any removals to Iraq</p> <p>12 of Iraqi nationals that had taken place in 2017</p> <p>13 where the Iraqi nationals expressed that they do</p> <p>14 not want to return to Iraq?</p> <p>15 A In 2017? Not -- not that I can recall,</p> <p>16 no.</p> <p>17 Q And so far in 2018, do you know of any</p> <p>18 Iraqi nationals who have been removed to Iraq who</p> <p>19 expressed that they desired not to return to Iraq?</p> <p>20 A Yes, I do.</p> <p>21 Q And who is that?</p> <p>22 A I don't know their names offhand. I do --</p> <p>23 I am aware that there are six aliens that did not</p> <p>24 sign a voluntary declaration in Stewart, Georgia</p> <p>25 and an additional four that did not sign one in</p>	<p style="text-align: right;">Page 120</p> <p>1 return to Iraq?</p> <p>2 A No, not at this time.</p> <p>3 Q Okay. For the six individuals who</p> <p>4 received travel documents today --</p> <p>5 A Uh-huh.</p> <p>6 Q -- have any conditions been put on their</p> <p>7 return to Iraq by the Iraqi Government?</p> <p>8 A I'm not aware of anything but, then again,</p> <p>9 you know, my staff merely reported to me that they</p> <p>10 received the travel documents. I've not done</p> <p>11 any -- any other more thorough analysis of -- of</p> <p>12 the conditions or the types of documents. I just</p> <p>13 know that they have travel documents in hand.</p> <p>14 Q Do you have an anticipated date in which</p> <p>15 you will return those six -- six Iraqi nationals</p> <p>16 we have just been discussing?</p> <p>17 A I do not. Again, we barely received the</p> <p>18 travel documents and we will have to coordinate</p> <p>19 their removal accordingly.</p> <p>20 Q Do you have an anticipated date for the</p> <p>21 return to Iraq of the Iraqi nationals who were</p> <p>22 interviewed in May 2018 and who subsequently had</p> <p>23 travel documents issued, what we call the 32 Iraqi</p> <p>24 nationals?</p> <p>25 A Sure. For specific dates, I can't</p>

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1 released from detention?

2 A I -- I don't know. I don't recall.

3 MS. SCOTT: We'll mark this as Exhibit 29,

4 please.

5 (Bernacke Exhibit 29 was marked for

6 identification and is attached to the transcript.)

7 Q This is an e-mail that you're not on, but

8 I wanted to ask you about the Iraqi national

9 that's referenced here.

10 A Okay.

11 Q Okay. So, Julius Clinton, who you

12 supervise, is communicating about Ahmed Tharis

13 Hacham. Do you see that?

14 A Is it at the bottom?

15 Q It's at the very bottom.

16 A Okay. Okay. I see that.

17 Q Okay. And there's an indication that he's

18 not a Hamama class member; correct?

19 A Correct.

20 Q Do you know if travel documents were

21 issued for this individual?

22 A Not offhand, no.

23 Q Is Julius Clinton the right person to ask

24 questions about individual Iraqi nationals?

25 A He could be. I mean the challenge is --

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1 is that we deal with a large volume of persons

2 cycling through. You know, Iraq is -- wasn't the

3 only country that was assigned to him at the time,

4 nor is it the only country that is assigned to

5 Mr. Maddox at present. So, he may or may not have

6 personal recollection of this particular case.

7 Q So, if we wanted to find out which

8 individuals were released or which individuals --

9 strike that.

10 If we want to find out which individuals

11 were released, are there documents that would

12 provide that information?

13 A Yes, there are.

14 Q And what are those documents?

15 A I'm sorry?

16 Q What are those documents?

17 A Those would be release notifications

18 coming from my unit.

19 Q And are those in electronic format?

20 A Yes, they are.

21 Q If we wanted to find out which individuals

22 were released due to a SLRRFF analysis, what

23 documents would we look at?

24 A I -- it's just a general Word document

25 that is a -- it's a -- we call it colloquially a

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1 "release letter." It's something that we send out

2 to the field for -- I want to caveat that these

3 are only for cases that are above the 180-day

4 mark. So, if a post-order custody review decision

5 resulted in a release prior to that 180-day line

6 in the sand, that would have been under the field

7 office's pursue and we wouldn't have had any

8 insight into that.

9 Q Okay. So, why don't we go ahead and

10 discuss more fully the SLRRFF process.

11 A Okay. Sure thing.

12 Q Let's start with the 180-day POOCR review.

13 And can you explain what that is.

14 A Sure. That, again, is a review of all the

15 individual facts of a particular individual case,

16 to include criminal history, immigration history

17 and travel document acquisition efforts. It

18 also -- you know, it relies largely on the

19 viability of obtaining a travel document, and we

20 make a custody decision based off of that.

21 Q What type of analysis -- under what

22 circumstances would a 100 -- when you're

23 conducting a 180-day custody review, what factors

24 do you look at to determine if an individual

25 should be released?

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1 A All the factors that I just described.

2 Q Can you list them again for me.

3 A Criminal history, immigration history,

4 travel document acquisition efforts and viability

5 of obtaining a travel document.

6 Q So, for each of those categories, what

7 factors do you look at to determine whether or not

8 someone should be released?

9 A For criminal and immigration history, it

10 would be risk to U.S. public. You know, again, as

11 I mentioned, with the 241.14D analysis, that would

12 have to be a very high threshold. It's a very

13 unique instance in which we exercise that

14 authority.

15 In terms of travel document acquisition

16 efforts and viability of obtaining a travel

17 document, that would be -- you know, it could

18 be -- again, it's a -- it's very subjective, but

19 it would be obtaining the amount of times we have

20 approached a particular embassy or government or

21 consulate to issue a travel document. It would be

22 the amount of liaison that has gone behind that

23 travel document request.

24 Q Can I stop you there for a second.

25 A Sure.

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<p style="text-align: right;">Page 137</p> <p>1 Q What do you mean by the "amount of 2 liaison"?</p> <p>3 A Many times, for countries that have a more 4 matured repeatable travel document issuance 5 process, we will merely have to -- we, ICE, will 6 merely have to submit a travel -- a paper copy of 7 a travel document request. You know, that 8 request, again, just includes immigration 9 documents, identity documents, that would support 10 an alien's identification and citizenship.</p> <p>11 And in -- in instances, in some instances, 12 they will issue a travel document without having 13 to do an interview or, you know, do anything 14 largely outside of reviewing the paper documents 15 that we provide to their office. Some require 16 interviews; some don't.</p> <p>17 For more difficult cases or cases for 18 governments that don't necessarily have a very 19 mature travel document issuance process in place, 20 we will have to meet with the embassy counselor 21 staff to discuss the case, walk them through the 22 case particulars. Anything that they necessarily 23 want to chat about regarding these different 24 cases, we will -- we will entertain them and 25 discuss those cases with them.</p>	<p style="text-align: right;">Page 139</p> <p>1 officers, the detention deportation officers, will 2 meet with the embassies to discuss the case, 3 whatever case it may be.</p> <p>4 And if a positive outcome is not yielded 5 in terms of a travel document potentially being 6 issued or assurances that one would be issued, 7 that could be elevated to greater, higher levels 8 of management within ERO. And I will engage, John 9 Schultz will engage, and any -- anyone above him 10 could potentially engage in those cases, as well.</p> <p>11 Generally speaking, that has resulted in 12 positive outcomes when we've done a greater level 13 of discussions, you know, at the desk officer 14 level, the detention deportation officer level, 15 or, you know, my level or higher levels, and -- 16 and it has precluded us from having to release 17 aliens.</p> <p>18 Q If, after having those types of 19 interactions, ICE still does not receive travel 20 documents, does that factor into whether or not 21 SLRRFF exists?</p> <p>22 A It could. It could.</p> <p>23 Q Okay. So, I interrupted you, and I think 24 you had some other factors you were going to talk 25 about.</p>
<p style="text-align: right;">Page 138</p> <p>1 Q So, if there is greater liaison, does 2 that -- how does that factor into the SLRRFF 3 analysis?</p> <p>4 A It -- it -- in my perspective and, again, 5 you know, I can only speak for myself when it 6 comes to, you know, the SLRRFF analysis and how I 7 conduct them, it demonstrates the amount of -- I 8 guess, the amount of vigor that goes behind a 9 travel document request and really walking through 10 the embassy staff, you know, the contents of the 11 documents, pushing for interviews, and really 12 doing a lot of hand holding when it comes to 13 coordinating any logistical aspect that they need 14 in terms of interviewing the alien, doing what 15 they need to get done in order to issue that 16 travel document.</p> <p>17 Q So, if there is greater liaison, is there 18 a less likelihood one would be released under 19 SLRRFF?</p> <p>20 A What do you mean by that?</p> <p>21 Q Okay. Yeah. So, I'm trying to figure out 22 how the amount of liaison factors into whether or 23 not SLRRFF exists.</p> <p>24 A So, generally speaking, for more 25 complicated cases, you know, our -- the desk</p>	<p style="text-align: right;">Page 140</p> <p>1 A Ooh, must have slipped my mind.</p> <p>2 Q So, we had criminal history -- we had the 3 four categories that you were looking at for 4 SLRRFF.</p> <p>5 A Uh-huh.</p> <p>6 Q We had the criminal history. We were just 7 talking about -- can you --</p> <p>8 A Criminal immigration, the amount of times 9 a travel document has been requested and then the 10 amount of liaison.</p> <p>11 Q Which --</p> <p>12 A I think those were it, yeah. Those are 13 the ones that I can think of offhand that I -- I 14 look for when I do my reviews.</p> <p>15 Q Does -- if you decide to decline release 16 from detention because you find SLRRFF exists, is 17 there anyone that reviews your decision?</p> <p>18 A For -- for a continued detention, no. For 19 releases, yes.</p> <p>20 Q And who reviews your decision for 21 releases?</p> <p>22 A Our assistant director for removals.</p> <p>23 Q And who is that?</p> <p>24 A Marlen Pineiro.</p> <p>25 Q And does anybody review her decision?</p>

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1 A Not that I'm aware of.

2 Q So, Mr. Schultz yesterday said you guys

3 call him Dad Schultz; is that correct?

4 A He's deputy assistant director, so there's

5 your acronym right there, but he is not my father.

6 Q So, does DAD Schultz review --

7 A Uh-huh.

8 Q -- your determination when you decide that

9 someone should be released under SLRRFF?

10 A Yes, he does. Yes, it follows the chain

11 of command and he's -- he's Ms. Pineiro's deputy.

12 Q When you decline release based on SLRRFF,

13 when is the next point that you make an assessment

14 if SLRRFF exists?

15 A 90 days thereafter or if we receive hard

16 declinations of a travel document and to our

17 interpretation, we do not see there being any

18 viable outcome for -- for an alien's potential

19 removal, then we will make a custody determination

20 at that point in time even if it is prior to the

21 90-day mark.

22 MS. SCOTT: Can you read that answer back.

23 (The reporter read the record as

24 requested.)

25 Q Okay. So, what do you consider to be a

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1 hard declination?

2 A In my opinion, that would be after we've

3 exhausted a number of resources to obtain a travel

4 document. That includes continued liaison with a

5 number of embassies and consulates. That would

6 include exhausting potential third-country

7 options, exhausting liaison efforts abroad with

8 our assistant attaches, usually in country or in

9 the region, Department of State engagement has not

10 resulted in any positive outcomes and we've really

11 tapped out all options -- in my perception, all

12 options to -- to obtain a travel document.

13 Q If at this 90-day mark you determine that

14 SLRRFF continues to exist, does anybody evaluate

15 your decision?

16 A No.

17 Q Is there any point in the process that

18 somebody evaluates your decision when your

19 decision is to deny release?

20 A Is there -- can you repeat that.

21 Q Sure. At any point when there is a SLRRFF

22 analysis --

23 A Uh-huh.

24 Q -- conducted, whether it's at the 180-day

25 point --

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1 A Uh-huh.

2 Q -- or a 90-day point --

3 A Uh-huh.

4 Q -- or thereafter, does anybody evaluate

5 your determination?

6 A No.

7 Q Do you, during that process, consult with

8 anybody regarding your determination?

9 A Usually my staff, if I have any questions.

10 If there's any questions related to their

11 recommendation for continued detention that I may

12 have with a third party, for example, Department

13 of State, I may confer with them.

14 Q Can you take a look -- let's take a look

15 at Exhibit 9. What I want to draw your attention

16 to is the pages at 270499.

17 A Okay.

18 Q Okay. If you look halfway down the page,

19 it says that Julius Clinton is responsible for the

20 briefing memo. Do you see that?

21 A I do.

22 Q And Julius Clinton reports to you;

23 correct?

24 A He did at the time.

25 Q He did, yes. Thank you for clarification.

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1 A No worries.

2 Q So, I want to talk to you about the

3 numbers here. As you can see on the Zadvydas

4 releases, this printout cut off fiscal year 2017.

5 A Uh-huh.

6 Q Do you know how many Zadvydas releases

7 took place in 2017?

8 A I don't.

9 Q Have you -- do you calculate the releases-

10 to-removals ratio that's discussed on 204798?

11 A I personally do not, no.

12 Q So, if I was to tell you that if we

13 reverse engineered the reverse -- the release-to-

14 removal ratio that's here at that 0.15 --

15 A Uh-huh.

16 Q -- using the fiscal years 2017 removals of

17 58 --

18 A Uh-huh.

19 Q -- and resulted in 10 Zadvydas releases,

20 would you have any reason to dispute that?

21 A I really couldn't speak intelligently to

22 it.

23 Q You just don't know what numbers --

24 A I just don't know.

25 MS. SCOTT: Okay. So, Will, we request a

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1 they will accept the removal of their -- their
2 backlog of cases with final orders of removal.
3 Although it's taken a significant amount of
4 liaison thus far and engagement with the embassy
5 and their government, they, in my viewpoint, have
6 taken appropriate steps to institute a repeatable
7 process for travel document issuance.

8 Q Okay. So, do you have any reason to
9 believe that Iraq will not accept its nationals
10 with final orders of removal for repatriation if
11 the Hamama stay is lifted?

12 A No, I do not. I believe they will be
13 issued travel documents.

14 MR. SILVIS: That's all I have.

15 MS. SCOTT: We're finished. Thank you.

16 THE WITNESS: Thank you.

17 THE COURT REPORTER: Ms. Scott, are you
18 ordering this to be transcribed?

19 MS. SCOTT: So, my assistant will be in
20 touch with you.

21 THE COURT REPORTER: Okay. Fine. Thank
22 you.

23 MR. SILVIS: Actually, we're going to ask
24 to read and sign the declaration and also -- I'm
25 sorry -- the deposition transcript. And, also, we

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1 will be requesting the 14 days under the
2 protective order to review and designate any parts
3 that we might think are protected.

4 MS. SCOTT: And for those 14-day period,
5 you want to treat this as highly confidential;
6 correct?

7 MR. SILVIS: Correct.

8 MS. SCOTT: Okay. Thank you.

9 (A discussion was held off the record.)

10 THE COURT REPORTER: And how am I to
11 handle the exhibits? Am I taking them?

12 MS. SCOTT: Yes, please. Take them all.

13 THE COURT REPORTER: Okay.

14 (Off the record at 1:47 p.m.)

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1 ACKNOWLEDGEMENT OF DEPONENT

2 I, MICHAEL BERNACKE, do hereby acknowledge

3 that I have read and examined the foregoing

4 testimony, and the same is a true, correct and

5 complete transcription of the testimony given by

6 me, and any corrections appear on the attached

7 Errata sheet signed by me.

8

9 _____

10 (DATE) (SIGNATURE)

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1 CERTIFICATE OF SHORTHAND REPORTER-NOTARY PUBLIC
2 I, Victoria L. Wilson, the officer before
3 whom the foregoing deposition was taken, do hereby
4 certify that the foregoing transcript is a true
5 and correct record of the testimony given; that
6 said testimony was taken by me stenographically
7 and thereafter reduced to typewriting under my
8 direction; that reading and signing was requested;
9 and that I am neither counsel for, related to, nor
10 employed by any of the parties to this case and
11 have no interest, financial or otherwise, in its
12 outcome.
13 IN WITNESS WHEREOF, I have hereunto set my
14 hand and affixed my notarial seal this 17th day of
15 July, 2018.
16 My commission expires January 31, 2019.
17
18
19 _____
20 VICTORIA L. WILSON
21 NOTARY PUBLIC IN AND FOR
22 THE DISTRICT OF COLUMBIA
23
24
25



July 18, 2018

U.S. Department of Justice
950 Pennsylvania Avenue NW
Northwest Building
Civil Rights Division
Washington, D.C. 20530

RE: Usama Jamil Hamama, et al vs. Rebecca Adducci, et al
Deposition of Michael Bernacke taken on July 13, 2018

Dear Mr. Silvis:

Enclosed is a copy of the above-referenced deposition and the Verification of Deponent page from the original transcript. Please have the witness review the deposition, sign the verification page and send it to U.S. Legal Support, Attn: Production Department for distribution to the ordering parties listed below.

Any changes are to be noted on the errata sheet in the following manner:

Page 12, Line 6 – This should be That

This sheet is to be distributed to the attorneys and attached to the original and copies of the transcript.

Thank you very much.

Debbie Stammersky
Production Department

Enclosure

cc: Kimberly Scott
Margo Schlanger

MICHAEL BERNACKE
July 13, 2018

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1 ACKNOWLEDGEMENT OF DEPONENT

2 I, MICHAEL BERNACKE, do hereby acknowledge
3 that I have read and examined the foregoing
4 testimony, and the same is a true, correct and
5 complete transcription of the testimony given by
6 me, and any corrections appear on the attached
7 Errata sheet signed by me.

8

9 08/02/2018

10 (DATE)



(SIGNATURE)

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ERRATA SHEET

[illegible]